

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 39 (90/003,627)

Paper No. 43 (90/003,336)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NYLOK FASTENER CORPORATION

Appeal No. 96-0765
Control No. 90/003,627¹

HEARD: September 15, 1997

Before KIMLIN, PAK and WARREN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 40,

¹ Reexamination requests filed November 9, 1994, Control No. 90/003,627, and February 18, 1994, Control No. 90/003,336, for the reexamination of Reissue Patent 33,766, based on Application 07/601,321, filed October 22, 1990; which is a reissue of Application 06/913,339, filed September 30, 1986, now U.S. Patent No. 4,835,819, issued June 6, 1989; which is a continuation-in-part of Application 06/907,582, filed September 15, 1986, now U.S. Patent No. 4,775,555, issued October 4, 1988.

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42-50, 52 and 53, all the claims remaining in the merged reexamination proceeding before us. Claim 52 is illustrative of the patent owner's claimed invention:

52. In a process for the fabrication of an article including the steps of assembling a threaded fastener to a structural member, performing an operation which deposits a thread interfering material on the assembled structural member and fastener, and joining the structural member to another structure by engaging the fastener with a mating fastener, the improvement comprising performing the following steps on the fastener prior to assembly to said structural member wherein a thermoplastic fluoropolymer masking and insulating material is directed to the threads of the fastener to impede deposition or retention of the subsequently applied thread interfering material:

supporting the fastener for treatment;

heating the fastener to a temperature sufficient to enable the fluoropolymer material to adhere to the threads of the fastener;

positioning a nozzle adjacent the fastener;

discharging a gaseous jet containing a powdered form of the fluoropolymer material from the nozzle toward the threads of the fastener;

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depositing the powdered fluoropolymer material onto substantially all of the heated threads of the fastener and accumulating the fluoropolymer material on the threads to form a masked fastener with masked threads having a substantially uniform masking and insulating fluoropolymer layer;

whereby when performing the operation and depositing the thread interfering material on the assembled structural member and masked fastener, the masking and insulating layer impedes the deposition or retention of the thread interfering material on the masked threads, and upon joining the structural member to the other structure, a proper threaded coupling is established between the masked fastener and the mating fastener.

In the rejection of the appealed claims, the examiner relies upon the following references as evidence of obviousness:

Kleinhenn	3,494,243	Feb. 10, 1970
Loeser et al. (Loeser)	4,114,505	Sept. 19, 1978
Probst	4,114,564	Sept. 19, 1978
Rodden et al.	4,366,190	Dec. 28, 1982

This is the second appeal of the instant merged reexamination proceeding. In the decision rendered September 9, 1996, we reversed the examiner's rejection under 35 U.S.C. § 305, but under the provisions of 37 CFR § 1.196(b) we entered a new ground of rejection of the same claims now on appeal under 35 U.S.C. § 103 over the collective teachings of Kleinhenn, Loeser, Rodden and Probst. The patent owner now comes before us with objective evidence of nonobviousness in the form of declarations for the purpose of rebutting the inference of obviousness drawn from the combined teachings of the applied

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references. In particular, the patent owner relies upon the declarations of Messrs. Duffy, Dudley, Nichols and Matecki as evidence of nonobviousness.

Claims 40, 42-50, 52 and 53 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kleinhenn, Loeser, Rodden and Probst.

Upon careful consideration of the opposing arguments presented on appeal, we concur with the patent owner that the evidence of nonobviousness of record outweighs the evidence of obviousness. Accordingly, we will not sustain the examiner's rejection of the appealed claims.

In essence, the examiner's rejection is the rejection we entered under 37 CFR § 1.196(b) in the earlier opinion. However, our rejection over the collective teachings of Kleinhenn, Loeser, Rodden and Probst was made in the absence of the declaration evidence now of record. In our view, the declarations of Messrs. Duffy, Dudley, Nichols and Matecki evidence the nonobviousness, at the time of filing the patent owner's application for patent, of applying powdered fluoropolymer onto heated threads of a fastener. In particular, the Nichols declaration provides evidence that one of ordinary skill in the art would not have expected that powdered fluoropolymer would adhere to a metal

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surface and, therefore, such fluoropolymer coatings were conventionally applied in liquid form comprising a binder component. Also, the Dudley declaration establishes that coatings formed by depositing a fluoropolymer in powdered form are superior to a fluoropolymer coated in liquid form with respect to accumulation of weld splattering, non-conductivity, and average free drive torque. We also note that declarant Matecki, who states that powder deposition of fluoropolymers was not done in the mid-1980s, has no financial interest in the patent owner and has not been compensated for providing the declaration.

In conclusion, it is our judgment that the evidence of nonobviousness presented by patent owner outweighs the evidence

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of obviousness relied upon by the examiner. Accordingly, the
examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	
CHUNG K. PAK)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
CHARLES F. WARREN)	
Administrative Patent Judge)	

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